



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

TERMS OF REFERENCE

REQUEST FOR PROPOSALS:

*The Department of Trade and Industry (**the dti**) invites interested Service Providers to submit proposals to conduct a socio economic impact study of the debt intervention measures as proposed in the National Credit Amendment Bill, 2017.*

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NOTE: should a Service Provider have reason to believe that the Terms of Reference are not open to promote competition or that it is written based on a particular brand / product / entity; the Service Provider shall notify the bid office of **the dti** within ten (10) calendar days after publication of the bid.

1. PURPOSE

1.1 To request proposals from Service Providers to conduct a socio economic impact study of the proposed debt intervention measures as proposed in the National Credit Amendment Bill, 2017,¹ (the Bill).

2. BACKGROUND

2.1 The purpose of the National Credit Act, 2005 (NCA), is to promote and advance the social and economic welfare of South Africans; to promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market industry; and to protect consumers. And with the proposed amendments in the Bill, the purpose of the NCA will be expanded to also provide for debt intervention as defined in the Bill.

2.2 At the end of September 2017, 25.08 million consumers were credit-active in South Africa. Of these credit-active consumers, 15.21 million consumers were in good standing while 9.87 million had impaired records (an impaired record refers to a consumer account that is classified as three or more payments or months in arrears, or which has an “adverse listing”, or that reflects a judgment or an administration order). Consumers with impaired records account for approximately 39.36 per cent of the credit-active consumers and may be considered over-indebted. It is estimated that about 1.7 consumers could qualify for debt intervention.

2.3 Existing mechanisms for debt intervention exclude a group of vulnerable consumers. The Insolvency Act, 1936 (Act No. 24 of 1936), does not assist a debtor where there is no benefit to creditors. The NCA provides for a debt review measure to alleviate household debt. Similarly, the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), provides for debt administration where an administrator assists to handle the debtor’s finances and pay off his/her debt.

2.4 However, due to the costs involved in these procedures, this vulnerable group is still excluded. Debt review appears to not be cost-effective for Debt Counsellors when considering applications of consumers earning less than R7500 per month, while debt

¹ The full copy of the published National Credit Amendment Bill, 2017 is available free online at www.gpwonline.co.za.

administration will cost the debtor up to 12.5% of the value of their debt repayments in administration costs.

- 2.5 Without a suitable alternative of debt intervention measures for over-indebted individuals, especially lower income groups, escaping the debt trap is an unbeatable challenge if they have to improve their financial position and become productive members of society.
- 2.6 Currently, the NCA does not adequately provide for prosecution of unscrupulous lenders. Thus, prohibited conduct has been occurring with little to no consequence. Over-indebtedness could be curbed if there was stricter enforcement of the provisions in the NCA on prohibited conduct and available credit life insurance facilities were used effectively where there are unforeseen changes in personal financial circumstances. Even “required conduct”, such as the registration with the National Credit Regulator (NCR), before a lender can provide credit to consumers is currently not policed or prosecuted. This is on account that in the NCA, as it now stands, it is not a criminal offence even though prohibited.
- 2.7 The Bill aims to provide for capped debt intervention to relieve chronically over-indebted South Africans who have no other effective or efficient option to get themselves out of the over-indebtedness cycle, and to assist these borrowers to rehabilitate and get a fresh start.
- 2.8 Among others, the debt intervention measures proposed in the Bill include the determination of maximum interest, fees, other charges and monthly instalment to be paid under a qualifying credit agreement; the suspension of all qualifying credit agreements, in part or in full for a period of 12 months or more; the extinguishment of debt under a qualifying credit agreement, debt rehabilitation and a mandatory credit life insurance on all credit agreements for longer than six months but no more than R50 000.
- 2.9 The Bill also aims to further limit the wide-spread abuse of consumers by unscrupulous lenders and to allow for simpler and more rigorous enforcement of the NCA by, amongst others, providing for criminal prosecution of persons who contravene the NCA.

3. OBJECTIVES OF THE STUDY

The objective of the study is to conduct a socio economic impact study of the debt intervention measures as proposed in the Credit Amendment Bill, 2017, specifically to:

- 3.1 Provide an analysis of the impact of the following proposed debt intervention measures on credit providers (banks, retailers, micro lenders, etc.), including debt collectors:
 - 3.1.1 The determination of maximum interest, fees, other charges and monthly instalment to be paid by debt intervention applicants;
 - 3.1.2 The suspension of credit agreements;

- 3.1.3 The extinguishment of debt;
 - 3.1.4 Cost of making representations to the National Credit Regulator (NCR) and National Consumer Tribunal (NCT); and
 - 3.1.5 The provision for the Minister to prescribe further debt intervention measures under economic circumstances such as natural disasters and widespread job losses.
- 3.2 Assess the impact on the level of over-indebtedness of targeted consumers over the short to long term, as driven by:
- 3.2.1 The determination of maximum interest, fees, other charges and monthly instalment to be paid by debt intervention applicants;
 - 3.2.2 The suspension of credit agreements;
 - 3.2.3 The extinguishment of debt;
 - 3.2.4 Debt rehabilitation; and
- 3.3 Determine the cost and resource implications for the implementation of the debt intervention measures for the following:
- 3.3.1 National Credit Regulator;
 - 3.3.2 National Consumer Tribunal;
 - 3.3.3 The Credit *Bureaux*; and
 - 3.3.4 The Financial Services Board.
- 3.4 Determine the impact of mandatory credit life insurance in reducing over-indebtedness.
- 3.5 Determine the impact of the proposed debt interventions on other critical role players in the retail credit sector, including but not limited to debt counselors, debt collectors, lawyers and payment distribution agents.
- 3.6 Determine the impact of the proposed debt intervention measures on other stakeholders, e.g. the South African Revenue Services and other financial sector regulators who have solvency mandates such as the South African Reserve Bank, and whether powers already exist in other areas that could be augmented.

- 3.7 Develop recommendations to strengthen the debt intervention measures in order to achieve the desired outcomes of reduced household over-indebtedness and improved well-being of the society.
- 3.8 Draw from the analysis done by the NCR on consumers who could qualify for debt intervention, the preliminary plans drawn by the NCT and NCR on capacity requirements for implementation of debt intervention and the results of the research conducted by Eighty-20 for the National Treasury in its study “Analysis into the Impact of Implemented and Proposed Policy Interventions”.

4. PROJECT SCOPE

The minimum scope of work required includes the following:

- 4.1 Profile the overall extent of consumer over-indebtedness by race, gender, employment type, income level, geographical location, type of credit provider, type of consumer credit, uses of credit, default on repayments by credit type, total debt (loan book by type, term) and consumer credit standings at the *Credit Bureaux*.
- 4.2 Profile the extent of non-performing loans (bad debt) by race, gender, income level, type of credit provider, type of consumer credit, and total debt.
- 4.3 Identify existing debt intervention measures or concessions made by credit providers on non-performing loans, the number and nature of consumers who had benefited from such debt intervention measures or concessions.
- 4.4 Assess the economic impact of the debt intervention measures (as outlined in 3.1 above) on the credit providers’ business operations, including the cost of making representations to the NCR and NCT.
- 4.5 Assess the socio-economic impact of the debt intervention measures (as outlined in 3.1 above) on targeted consumers.
- 4.6 Assess the impact of mandatory credit life insurance in reducing over-indebtedness.
- 4.7 Assess the extent to which the debt intervention measures will reduce over-indebtedness, improve access to credit, especially taking into account future cost of and access to credit, and the well-being of targeted consumers over the short to medium term.

- 4.8 Consider which persons and organisations other than credit providers and those identified above may be impacted by the debt intervention measures, including persons participating in the credit sector such as debt counselors and payment distribution agents.
- 4.9 Assess the impact of the debt intervention measures on the low-income consumer credit market structure, as well as the impact on micro-lenders and other smaller players versus large credit providers.
- 4.10 Assess the impact of the debt intervention on the stability of the banking and retail sectors, income and employment levels for the different categories of credit providers, contribution of the credit industry as a percentage of GDP and the knock-on effect on the macro-economy.
- 4.11 Posit a simplified measure or a set of indicators that could be applied to assess the level of over-indebtedness of a debt intervention applicant.
- 4.12 Assess the impact of the application of *rule nisi* in the debt intervention application process, e.g. the use of interim orders as a measure to relieve over-indebtedness.²
- 4.13 Assess the impact of the retrospective, once-off or continuous application of the debt intervention measures.
- 4.14 Assess the appropriateness and proportionality of the proposed penalties to the relevant offences as stated in the Bill.
- 4.15 Assess the risks associated with the implementation of the debt intervention measures.
- 4.16 Assess the impact of criminalising the failure by credit providers and debt counsellors to report suspected reckless lending.
- 4.17 Assess the cost and resource requirements for implementing the debt intervention measures for the following, with the assumption that 1.7 million consumers could apply:
 - 4.17.1 The National Credit Regulator, including costs for the financial literacy training programme and the system similar to the Debt Counselling Rules System (DCRS);
 - 4.17.2 The National Consumer Tribunal;
 - 4.17.3 The Credit *Bureaux*; and

² A rule nisi is an order “to show cause”, meaning that the ruling is absolute unless the party to whom it applies can show cause why it should not apply. In divorce cases, for instance, a rule nisi is issued by the court to tell the parties that they have to wait a certain period of time before making their divorce final.

- 4.17.4 The Financial Service Board.
- 4.18 Assess the costs for systems development or upgrade for the flow of debt intervention information between the NCR, NCT and Credit *Bureaux*.
- 4.19 Assess how the debt review process compares to the proposed debt intervention in terms of cost and efficiency.
- 4.20 Assess the time period required for the NCT, NCR and Credit *Bureaux* to put in place all the necessary capacity and mechanisms for implementation of debt intervention.
- 4.21 Assess the time period required to rehabilitate a successful debt intervention applicant.
- 4.22 Explore how existing and further debt intervention measures could be enhanced and considered in the effort to achieve the objective of reduced household over indebtedness and improved well-being of consumers. This could include proposals on:
- 4.22.1 How the debt intervention application process could be rolled out effectively and efficiently in the short to medium term, given that about 1.7 million consumers could apply;
- 4.22.2 How consumers in remote areas could be reached given that the NCR is located in one central point;
- 4.22.3 When and how the suspension of credit agreements and debt extinguishment could be applied; including how to deal with accumulated interest and fees at the end of the suspension of a credit agreement.
- 4.22.4 How to offer immediate relief to consumers who are victims of reckless lending, e.g. through interim orders or compliance notices.
- 4.22.5 How the verification of information required for debt intervention could be undertaken, i.e. verification of over-indebtedness, assets, change in financial circumstances, etc.
- 4.22.6 How the abuse of debt intervention by consumers and credit providers could occur and how it could be curbed;
- 4.22.7 How the process to hear representations by credit providers could be done;
- 4.22.8 How mandatory credit life insurance could be implemented, given that there has to be insurers who are willing to offer such an insurance product.

4.22.9 How existing debt relief mechanisms such as debt review and sequestration could be enhanced to the benefit of low income consumers.

5. METHODOLOGY

5.1 Service Providers are required to propose rigorous methodologies which they will use to conduct this study and provide an explanation of the appropriateness of the proposed methodologies in achieving the objectives and scope of the study.

5.2 A qualitative and quantitative analysis of impact on the enforcement capacity, credit providers (such as banks, micro lenders and retailers), other relevant stakeholders, and the economy is preferred.

5.3 It will be imperative for the Service Provider to outline the methodologies to be followed and why particular methodologies were chosen.

6. PROJECT DELIVERABLES

6.1 The below mentioned deliverables must be read and understood in conjunction with the project scope in paragraph 4.

Key activities	Outputs and deliverables	Time-frames
1. Project inception and planning	1.1. Inception meeting	Two (2) weeks
	1.2. Inception report (including project plan and methodology to be followed)	
2. Research / information gathering and analysis; and drafting of the report	2.1. First draft report, including data collection, analysis and recommendations	Eight (8) weeks
	2.2. Presentation of the 1 st draft report to the Project Steering Committee (PSC) and the Deputy Director General of the Consumer and Corporate Regulation Division (CCRD).	
3. Project close out	3.1. Final report (Word, PDF and Power-Point Presentation).	Four (4) weeks
	3.2. Presentation of the final report to the	

Key activities	Outputs and deliverables	Time-frames
	PSC and Deputy Director General of CCRD.	

6.2 In addition to the above deliverables, the appointed Service Provider will be required to have a number of project progress meetings with **the dti** Project Steering Committee as well as to submit monthly project progress reports.

7. SKILLS TRANSFER

7.1 Service Providers' proposals should state how they will impart relevant knowledge and skills to **the dti** employees involved in this project.

8. QUALIFICATIONS, EXPERIENCE AND EXPERTISE

The proposed key staff for this project must comply with the following requirements:

8.1 The proposed team leader must be in possession of a postgraduate qualification at Master's level or above (PHD or Doctorate) in one of the following fields:

- 8.1.1. Economics, or
- 8.1.2. Legal studies, and
- 8.1.3. Research or Impact Assessment.

8.2 Each team member, excluding the team leader, must have at least a bachelor's degree (NQF level 7). The combined qualifications of the team must include the following fields:

- 8.2.1. Economics AND
- 8.2.2. Legal studies.

8.3 The team leader must have the following experience:

- 8.3.1. At least 5 years' experience in research or impact assessment AND
- 8.3.2. Has produced or written at least 3 impact assessment reports in a legal environment or social sciences.

8.4 Each team member, excluding the team leader, must have experience in the following fields:

- 8.4.1. Research or Impact Assessment.
- 8.4.2. Legal environment.

The combined experience of the team must include both fields in 8.4.1 and 8.4.2.

- 8.5 Service Providers must submit comprehensive CV's of all proposed key staff in the following format: 1st Column: Name and ID number of key staff member; 2nd column: Relevant qualification(s) and courses successfully completed; 3rd column: number of years' relevant experience indicated in numerical format; 4th column: detailed information to prove relevant work experience and knowledge in field of expertise (as indicated in below table).

Name and ID number of key staff member	Relevant qualification(s) and courses successfully completed	Number of years' relevant experience in numerical format	Detailed information to prove relevant work experience and knowledge in field of expertise.

NB: the dti reserves the right to vet all documentation and information provided by Service Providers to prove their relevant experience and ability to perform the service.

9. DUE DILIGENCE

- 9.1. The Service Provider must have current technical and logistical capacity to perform the work required. In order to prove this, the Service Provider must provide details of facilities, resources and capacity.

10. CONDITIONS

- 10.1. A Service Level Agreement must be signed with the successful Service Provider before work commences;
- 10.2. Proposed key staff members must participate actively and be available to perform services in accordance with the contract. In instances where a proposed key staff member is not available to perform services at a specific period in time, the Service Provider will be responsible to provide a replacement with similar qualifications and experience in order to guarantee the same standard of work to **the dti**. Each team member's role must be clearly outlined in the project plan.
- 10.3. A project plan detailing the tasks, activities and target dates for the work to be undertaken should be submitted to **the dti** within 10 working days after appointment of the successful Service Provider. Each team member's role must be clearly outlined in the project plan;

- 10.4. As previously indicated **the dti** reserves the right to vet all qualifications and other documentation provided by Service Providers to prove relevant qualifications, experience and expertise prior to the appointment of a Service Provider;
- 10.5. Copyright and intellectual property rights to all documentation, reports etc. that emanate from this assignment will vest with **the dti**;
- 10.6. The points scored for price and BBEE points will be rounded off to the nearest 2 decimals as determined in the PPPFA Regulations;
- 10.7. Proposals received after the closing date will not be accepted for consideration;
- 10.8. The State reserves the right to conduct supplier due diligence prior to final award or at any time during the contract period. This may include site visits;
- 10.9. The Project Manager of **the dti** may communicate with Service Providers where clarity is sought after the closing date of the proposals and prior to the award of the contract, or to extend the validity period of the proposals, if necessary;
- 10.10. All communication between the Service Providers and the Project Manager of **the dti** must be done in writing;
- 10.11. Service Providers must ensure that they are registered on the Central Supplier Database of the National Treasury as this is compulsory with effect of 1 April 2016 in order for Service Providers to be considered for conducting business with state (Par. 7.3 of National Treasury's Circular no 3 of 2015/2016);
- 10.12. Service Providers must ensure that their tax matters are in order in line with the Preferential Procurement Policy Framework Act and the Treasury Regulations; and
- 10.13. Service Provider whose tax matters are declared not to be in order will be disqualified (PPPFA section 14 and Treasury Regulation 16 A9.1. (d)).

11. PRICE

- 11.1. The proposal price must represent the total cost of the project which will be payable by **the dti** to the appointed Service Provider upon satisfactory work delivery, in accordance with an agreed payment schedule which must be linked to set deliverables. The payment schedule will be stipulated in the SLA.
- 11.2. The proposal price must be inclusive of all costs plus VAT and quoted in RSA currency.
- 11.3. In accordance with National Treasury Instruction No. 02 of 2016/2017 on Cost Containment Measures, rates of remuneration will be subject to negotiation, not exceeding the applicable rates as contained in the following guidelines:
 - 11.3.1 The "Guide on Hourly Fee Rates for Consultants", as issued by the Department of Public Service and Administration (DPSA); and/or

- 11.3.2 Remuneration guidelines issued by professional service organisations or regulatory bodies, as may be relevant.

12. THE DTI OBLIGATIONS

- 12.1. **the dti** Project Manager will serve as the contact person on all matters relating to the project;
- 12.2. **the dti** Project Manager will review, evaluate and approve the services provided by the Service Provider against the Service Level Agreement on an ongoing basis and prior to payment is made;
- 12.3. **the dti** will supply all reasonable, relevant, available data and information required and requested by the Service Provider for the proper execution of the services and such assistance as shall reasonably be required by Service Provider in carrying out their duties under this contract.

13. SERVICE PROVIDER'S OBLIGATION

- 13.1 The Service Provider undertakes to act as an independent contractor in respect of the work;
- 13.2 To work closely with the Project Manager responsible for the project in **the dti**;
- 13.3 Attend meetings when required by the Project Manager for the purposes of obtaining information or advice with regard to the work and assignments or any matters arising from or in connection therewith;
- 13.4 The Service Provider will be responsible for its own computers and technical literature to adequately perform all the functions;
- 13.5 The Service Provider must exercise all reasonable skill, care and diligence in the execution of the work and shall carry out their obligation in accordance with professional standards;
- 13.6 The Service Provider must in all professional matters act as a faithful advisor to **the dti**, as well as respecting the laws and customs of any country and provinces in which any business in relation to the project is conducted;
- 13.7 All information availed to the Service Provider in the course of the project must be deemed confidential and will remain the property of **the dti**;
- 13.8 The Service Provider will be required to sign a confidentiality declaration form, undertaking to keep all the information at his/her disposal as a result of being awarded the contract by **the dti** strictly confidential;
- 13.9 The Service Provider must not disseminate any information gathered during the conduct of the project, publicize or release media statements in relation to the assignment;
- 13.10 Any information gathered during the conduct of the assignment is the property of **the dti** and may not be distributed without prior written approval of **the dti**;

- 13.11 The Service Provider will be deemed to have been satisfied as to the correctness and sufficiency of the rates and prices set out in their Proposals for the services to be rendered;
- 13.12 The Service Provider must plan and provide for all possible risks that may affect the delivery of the project on time and indicate what mechanisms are in place to manage such risks.

14. PROPOSALS EVALUATION CRITERIA

- 14.1. The **80/20** principle and **two envelope / file system** will apply in evaluating the proposals in accordance with the amended PPP Regulations pertaining to the Preferential Procurement Policy Framework Act, Act no 5 of 2000.

14.2 Two envelope / file system

The two envelope / file system is based on the submission of the functional and financial proposals in two separate envelopes or files. NO financial information may be contained in the functional envelope or file. Submission must be done as follows:

14.2.1. Functional proposal:

Service Providers must submit their functional proposal in a sealed envelope or file with the name of the Service Provider clearly indicated on the envelope or file. This envelope or file should **only** contain the functional proposal and **NO** financial information.

14.2.2. Financial proposal:

The financial proposal, certified copy of B-BBEE certificate or original affidavit, SBD 4 and SBD 9 must be submitted in a **SEPARATE** sealed envelope or file with the name of the Service Provider clearly indicated on the envelope or file.

NB: Service Providers must hand deliver or courier a certified copy of B-BBEE certificate or original affidavit for awarding B-BBEE points.

- 14.3 All proposals will be evaluated in terms of the two phase process once the pre-qualifying of proposals received is done. All proposals received are subject to a pre-qualification process to determine compliance with compulsory requirements / conditions. All proposals that pass the pre-qualification process will then be evaluated as follows:

- 14.3.1. **First phase: Functional evaluation.** This evaluation is based on the functional proposal submitted in envelope/ file one (functional envelope / file). For this phase there is a cut-off score of 60% and only the proposals that score 60% and above during the functional evaluation will be considered during the second phase of evaluation.

14.3.2 **Second phase: Price and B-BBEE status level.** During the second phase all Proposals that scored 60% and above during the functional evaluation will be considered for the second phase where points will be awarded for price and B-BBEE scores in accordance with the amended PPP Regulations pertaining to the Preferential Procurement Policy Framework Act, Act no 5 of 2000.

Key Scores

Score	Description
0– Non-compliant	No evidence provided to substantiate compliance
1 – Poor	Unacceptable, does not meet set requirements
2 – Average	Reasonable but not sufficient to fully satisfy the set requirements
3 – Good	Fully complies to the set minimum requirements
4 – Very Good	Above average compliance to the set requirements
5 – Excellent	Meets and exceeds the set requirements

PHASE 1: FUNCTIONAL EVALUATION

No	Criteria	Weighting	Rate (0-5)	Total score
1.	Proposed qualifications of the team leader:	10		
1.1.	The team leader must be in possession a postgraduate qualification at Masters level or above (PHD / Doctorate) in one of the following fields: 1.1.1. Economics, 1.1.2. Legal studies OR 1.1.3. Research or Impact Assessment.			
2.	Proposed qualifications of team members	20		
2.1.	Each team member, excluding the team leader, must have at least a bachelor’s degree (NQF level 7). The combined qualifications of the team, excluding team leader, must include the following fields:			
	2.1.1.Economics	10		
	2.1.2. Legal studies.	10		
3.	Proposed experience of the team leader:	20		
3.1.	The team leader must have the following experience:			
	3.1.1. At least 5 years’ experience in research or impact assessment.	10		

	3.1.2. Has produced or written at least 3 impact assessment reports in the legal environment or social sciences.	10		
4.	Proposed team members' experience:	20		
4.1.	Each member of a team, excluding team leader, must have at least 3 years' relevant experience. The combined team members' experience must include the following fields:			
	4.1.1. Research or impact assessment	10		
	4.1.2. Legal environment.	10		
5.	Proposed methodology:	20		
5.1.	Proposed methodology on how the study will be carried out from its inception until it is finalised.			
6.	Skills Transfer:	10		
6.1.	Demonstration of how the service provider will transfer knowledge and skills to the dti officials involved in the project.			

PHASE 2: PRICE AND PREFERENCE POINTS

No	<u>80/20 Principle</u>	Points
1	<u>Price</u>	80
2	<u>B-BBEE status level of contribution</u>	20
	Maximum points	100

15. CONTRACTUAL PERIOD

15.1 The project should be completed within fourteen (14) weeks from the date of last signature on the Service Level Agreement (SLA) that will be signed between **the dti** and the appointed service provider.

16. CONTACT DETAILS

Please direct all technical questions to:
Ms. Mokgadi Mathonzi Department of Trade and Industry (the dti) Email: mmathonzi@thedti.gov.za